

UNITED STATES COURT OF APPEALS

**Filed 4/16/96**

TENTH CIRCUIT

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

TOBY LAURA POLASKY,

Defendant - Appellant.

No. 95-4175  
(D. Ct. No. 95-CV-64)  
(D. Utah)

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**ORDER AND JUDGMENT\***

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Before TACHA, BALDOCK, and BRISCOE, Circuit Judges.

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After examining the briefs and the appellate record, this three-judge panel has determined unanimously that oral argument would not be of material assistance in the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

This appeal is from an order of the district court dismissing pro se appellant's claims brought pursuant to 28 U.S.C. § 2255 on the grounds that none of the claims are jurisdictional and all relate to allegations of misconduct by the United States. Appellant

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\*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. This court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

argues on appeal that the district court erred in refusing to grant a hearing on her motion brought pursuant to 28 U.S.C. § 2255, where she had argued that newly discovered evidence warranted review by the district court and authorized such a hearing. We affirm.

Appellant entered a *nolo contendere* plea in the United States District Court. The plea entered by appellant followed a series of motions during which appellant sought to show outrageous government conduct and a failure on the part of government officials to preserve exculpatory evidence. Despite appellant's recharacterization of the evidence regarding the government's actions at this point, appellant has waived the right to appeal those issues or to raise them on a 28 U.S.C. § 2255 motion. Appellant's *nolo contendere* plea in this case waives all nonjurisdictional defects. Tollett v. Henderson, 411 U.S. 258 (1973). None of the allegations made in the district court nor those raised on appeal are jurisdictional. We therefore **AFFIRM** the order of the district court dismissing this action.

The mandate shall issue forthwith.

ENTERED FOR THE COURT

Deanell Reece Tacha  
Circuit Judge